IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4816 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GAJENDRA R RAVAL

Versus

MANAGER

Appearance:

1. Special Civil Application No. 4816 of 1989

MR VM TRIVEDI WITH MS. KRISHNA RAVAL for Petitioner.

RULE SERVED for Respondent No. 1-5

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 23/02/2004

ORAL JUDGEMENT

The petitioner has filed this petition under Article 226 of the Constitution of India challenging the award passed by the Labour Court on 17.01.1989 in

Recovery Application No. 2339 of 1977 whereby the Labour Court has dismissed the application filed by the petitioner.

2. It is the case of the petitioner that petitioner was employed as Purchase Assistant with respondent No.1 Company in 1969. At that time, he was doing the work of respondent No.1 only and thereafter, respondent Nos.2 to 5 companies were incorporated and the petitioner was also asked to work for all these companies. Though the petitioner was assured to give an extra remuneration for the work done by the petitioner for other companies, the amount was not paid. Hence, the petitioner was constrained to file recovery application against the respondent Companies before the Presiding Officer, Labour Court, Ahmedabad for recovery of extra salary which was not paid to the petitioner.

3. The petitioner has worked for more than 7 years for other Companies and still no amount was paid to the petitioner. It was further stated that several documentary evidence produced by the petitioner before the labour Court conclusively proved that the petitioner was entitled to the additional remuneration of Rs.22,300/-. Even though the respondents have agreed before the Labour Court to produce the documentary evidence, the same were not produced and hence, the case made out by the petitioner before the Labour Court remained uncontroverted and instead of allowing the said claim of the petitioner, the Labour Court has committed a grave error in rejecting the Recovery application of the petitioner on the ground that the Labour Court has no jurisdiction to entertain such application under Section 33 C (2) of the Act as the claim made by the petitioner was neither on the basis of any award or settlement nor any pre-existing right was available to the petitioner.

4. It is this order which is under challenge in the present petition.

5. Mr. V.M. Trivedi with Ms. Raval, learned advocates appearing for the petitioner submitted that the Labour Court has proceeded entirely on erroneous premises and instead of determining the amount due and payable to the petitioner by the respondent Companies, the Labour Court has held that it has no jurisdiction to entertain the claim of the petitioner. In support of the petitioner's claim that the Labour Court is competent to decide the issue raised before it and to determine the amount due and payable to the petitioner, by entertaining application under Section 33 C (2) of the Act, he relied

on the decision of the Hon'ble Supreme Court in the case of THE CENTRAL BANK OF INDIA LIMITED V/S. P.S. RAJAGOPALAN, A.I.R. 1964 SUPREME COURT 743 wherein the Hon'ble Supreme Court has taken the view that "when sub-s. (2) of S. 33C refers to any workman entitled to receive from the employer any benefit there specified, it does not mean that he must be a workman whose right to receive the said benefit is not disputed by their employer. The claim under S. 33C(2) clearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases, have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to the main determination which has been assigned to the Labour Court by sub-sec. (2)."

6. He further relied on the decision of the Hon'ble Supreme Court in the case of NAMER ALI CHOUDHURY AND OTHERS V/S. THE CENTRAL INLAND WATER TRANSPORT CORPORATION LIMITED AND ANOTHER, 1977 S.C.C. 575 wherein it is held that "If any question arises as to the amount of money due to the workman and if the workman is entitled to any money, it is not necessary that there should also be a dispute about the amount of that money for conferring jurisdiction of a Labour Court."

7. He further relied on the decision of the Bombay High Court in the case of NITYANAND M. JOSHI AND ANOTHER V/S. THE LIFE INSURANCE CORPORATION OF INDIA AND OTHERS, A.I.R. 1970 SUPREME COURT 209 wherein it is held that "It is plain from the wording of sub-section (1) and sub-section (2) of Sec. 33C that the former sub-section deals with cases where money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter VA, while the latter sub-section deals with cases where a workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money."

8. He further relied on the decision of the Bombay High Court in the case of NAMDEO VISHWANATH RUKARI AND OTHERS V/S. BHAGWAN VISHWANATH KASTURE AND OTHERS, 1995 (3) L.L.J. 54 wherein the Bombay High Court has held that "if the petitioners who had taken extra work from one of their employees, on part-time basis, for writing accounts for one of their other activities he does not cease to be in the employment of the Transport Company and becomes an employee in the activities of agriculture merely because he writes accounts for one extra activity of his employer after his office hours. This part-time employment cannot be separated and divorced from the main

employment of the first respondent with the petitioners." Therefore, the Court has held that there was no infirmity apparent on the face of record in the judgment and order passed by the Labour Court awarding salary while entertaining the Recovery application under Section 33 C (2) of the Act.

9. Based on the aforesaid judgments, Mr. Trivedi has vehemently argued that since the petitioner has worked for other companies and since there was no dispute about the work, the salary for the extra work, as claimed by the petitioner should be awarded by entertaining the recovery application filed under Section 33 C (2) of the Act. Since the Labour Court has committed error in rejecting the petitioner's application after the expiry of the period of 12 years merely on the ground of jurisdiction, is not just and proper and hence, the same order may be quashed and set aside and the respondents be directed to award the salary for the extra work done by the petitioner.

10. I have heard learned advocates appearing for the petitioner. Though the notice was duly served on the respondents, nobody appears on behalf of the respondents.

11. I have also gone through the order passed by the Labour Court and the authorities relied on by the learned advocate appearing for the petitioner. The law laid down by the Hon'ble Apex Court will have to be applied to the facts of the case as was found by the Labour Court. After appreciating the entire facts and circumstances of the case and the evidence led before the Labour Court, a conclusion drawn by the Labour Court was to the effect that the claim made by the petitioner was neither based on any award nor any settlement. The petitioner was not in a position to establish the fact that his claim was based on any pre-existing right. It is also of some what strange that though the petitioner was said to have been working since 1970 onwards, for different Companies which were incorporated from time to time and though the amount of salary as agreed as per the averments made by the petitioner and the arguments canvassed before this Court, the petitioner went on to work for other Companies. No complaint was made nor any grievance was raised and it was only in 1977, a recovery application was filed before the Labour Court. The Labour Court has, therefore, come to the conclusion that the work which was assigned to the petitioner was part of his duty and there was nothing on record to suggest that for doing such work, any extra remuneration or salary was agreed to be paid. There were other employees also. Neither of them was examined by

the petitioner in support of his claim nor any such instance was cited before the Court showing that they have been paid extra salary for such extra work. The Labour Court has also observed that the claim made by the petitioner was based merely on oral understanding and the petitioner has failed to prove his claim by leading any evidence whatsoever and since the claim was not established by the petitioner, the Labour Court has not thought it to fit to go into the allowability of the said claim. Hence, even if the Labour Court has power to go into the question regarding determination of the amount due and payable to the petitioner for extra work said to have been done for other Companies, in absence of any material evidence, the Labour Court has refused to exercise that jurisdiction.

12. In above view of the matter, the Court is of the view that the decision taken by the Labour Court after appreciating the entire facts and circumstances of the case, cannot be said to be unreasonable or perverse requiring interference by this Court while exercising power under Article 226 of the Constitution of India. The petition is, therefore, dismissed. Rule discharged without any order as to costs.

[K.A. PUJ, J.]

#Savariya#

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